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Scott C. Harris

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT C. HARRIS

Appeal 2010-002045
Application 09/577,449
Technology Center 2400

Before RICHARD TORCZON, HOWARD BLANKENSHIP, and
JENNIFER S. BISK, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 26-50, which are all the claims remaining in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

Representative Claim

A method of accessing files on a computer, comprising:

scanning a human body part to obtain information of said human body part that is indicative of at least one characteristic of the human body part;

receiving information indicative of a value known to the user, wherein said value has been entered by a user into the computer, and wherein said value identifies a portion of said scanned human body part among the whole scanned human body part;

based on both said information indicative of said body part, and also on said value, using said computer for obtaining a cryptographic key, by using only said portion of said scanned human body part identified by said received value to carry out at least a portion of said obtaining, and wherein said cryptographic key is used to enable a cryptographic operation which includes at least one of encryption or decryption of at least one file, on the computer; and

using said cryptographic key to carry out at least one of encryption and/or decryption of at least one file of the computer.

Examiner's Rejections

Claims 26 and 28 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claims 26-31, 33-39, and 41-50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bjorn (US 6,035,398) and Freedman (US 6,259,805 B1).

Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bjorn, Freedman, and Hanna (US 6,714,665 B1).

Claims 32 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bjorn, Freedman, and Takhar (US 6,002,787).

ANALYSIS

Section 103(a)

The Examiner rejects claim 26 under § 103(a) over the combination of Bjorn and Freedman. Appellant argues that the references do not teach receiving information indicative of a value known to the user, wherein the value, which has been entered into the computer and is used for obtaining a cryptographic key, identifies a portion of the scanned human body part among the whole scanned human body part.

The rejection relies on a particular portion of Freedman for disclosing or suggesting receiving information indicative of a value known to the user, where the value identifies a portion of the scanned human body part among the whole scanned human body part. In particular, Freedman describes a user selectively scanning fingerprints in a predetermined order (col. 11, ll. 44-67; Fig. 9A). Freedman's teachings are similar to teachings set forth in Appellant's disclosure (Spec. 8:10-14).

However, we disagree with the Examiner's apparent claim interpretation. *See* Ans. 5 ("[Appellant's] Specification discloses selection of multiple body parts in a precise order"). Claim 26, however, recites receiving information indicative of a "value" known to the user. A "value" consistent with the requirements of the claim may be an assigned *number*. *See, e.g., Webster's Ninth New Collegiate Dictionary* at 1303 (Merriam-Webster Inc. 1990) ("4 a: a numerical quantity that is assigned or is determined by calculation or measurement <let x take on positive ~s> <a ~

for the age of the earth>.”). In the field of computers, a “value” may be “[a] quantity assigned to an element such as a variable, symbol, or label.”

Microsoft® Computer Dictionary, Fifth Edition (Microsoft Press 2002). A predetermined order for scanning fingerprints is not a “value” under either of the general or the technical definition of “value.”¹

We acknowledge that Appellant seems to indicate that the claim 26 limitations in controversy may extend to, or cover, the aforementioned disclosure at Specification page 8, lines 10 through 14. *See, e.g.*, Br. 6 (Summary of Claimed Subject Matter) and 26 (“This is clearly a disclosure of values known to the user.”). However, we reject any notion that either of Appellant’s or Freedman’s disclosure of scanning body parts in a predetermined order meets the requirements of a “value” that identifies a portion of the scanned body part among the whole scanned human body part as claimed.

Appellant’s disclosure does, however, teach a “value” consistent with the requirements of claim 26. The Specification describes determining fingerprint ridge spacing along a reference line and using the distance values to generate a cryptographic key. Spec. 6:8 - 7:16; Fig. 2. The Specification further provides:

The lines [Fig. 2] that are used to obtain the information can also be at specified angles to the reference lines, e.g., at 22 degrees. The angles can be set, or can be entered by the user, as a form of personal identification. For example, the user

¹ Moreover, even if a predetermined order could somehow be considered a “value,” the rejection provides insufficient evidence and reasoning in support of why the ordinary artisan would have used the predetermined order (the multiple entries) taught by Freedman to obtain a cryptographic key as taught by Bjorn.

can enter 22 while a specified finger is in the reader. This takes the line along 22 degrees. It effectively forms a PIN that must be entered to obtain the proper code from the biometric information.

Spec. 7:17 - 8:2.

Thus, the user enters a *number* (22) that identifies a portion of the scanned human body part (those fingerprint ridges along a line 22 degrees from a reference line) among the whole scanned human body part (the entirety of the finger or fingerprint).

As the rejection of claim 26 is based on an improper interpretation of the claim, and Freedman has not been shown to teach the limitations that the rejection attributes to the reference, a prima facie case of obviousness for the claimed subject matter has not been established. We thus cannot sustain the § 103(a) rejection of claim 26. Independent claim 37 recites limitations similar to those for which the rejection of claim 22 fails. The remaining independent claim (claim 46) recites at the least receiving second information indicative of a value known to the user, and obtaining a cryptographic key based in part on the second information. Moreover, as Appellant indicates, how Bjorn might be deemed to teach portions along different “references” as claimed is neither apparent nor explained (*see* Ans. 10-11).

Accordingly, and since neither of the Takhar or Hanna references as applied against dependent claims remedies the basic deficiencies in the rejection against the base claims, we cannot sustain the rejection of any claim on appeal under 35 U.S.C. § 103(a).

Section 112, First Paragraph

Appellant has not responded in this appeal to the Examiner's § 112, first paragraph, rejection of claims 26 and 28 as failing to comply with the written description requirement. We summarily sustain the rejection of claim 28. *See* MPEP § 1205.02 ("If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board.").

Ordinarily, we would also (summarily) sustain the § 112 rejection of claim 26. However, the rejection of claim 26 is based on the Examiner's finding that the disclosure fails to provide adequate support for the limitation "wherein said value identifies a portion of said scanned human body part among the whole scanned human body part." Our review of the prior art rejections in this case required consideration of the instant disclosure for interpretation of the limitation upon which the § 112 rejection of claim 26 is based. Although the disclosure might not provide *in haec verba* support for what the value "identifies," Section 112 does not require that the disclosure contain terms identical to those in later-filed claims. Because we find adequate support for the claim 26 limitation as indicated in the above § 103(a) analysis, we do not sustain the § 112, first paragraph, rejection of claim 26.

DECISION

The rejection of claims 26 and 28 under 35 U.S.C. § 112, first paragraph, is affirmed with respect to claim 28 but reversed with respect to claim 26. The rejections of claims 26-50 under 35 U.S.C. § 103(a) are reversed.

The Examiner's decision to reject claims 26-50 is thus affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED-IN-PART

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